

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

WP(C).No. 25461 of 2005(F)

PETITIONERS:

1. C.V. HARISANKAR, ATTUKAL KANNETHU VEEDU,
C.V. NILAYAM, KARAKONAM-695 504.
2. V. SANTHOSH KUMAR, S/O. VASUDEVAN NAIR,
AMBIKASADANAM, MULLASSERI, TRIVANDRUM.
3. M. PRAKASH, S/O. MARTIN LUTHER,
THUTTIYODU KUNNUVILA PUTHEN VEEDU
KARAKONAM, TRIVANDRUM.

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI
SMT.ANALAKHUSI BHASKAR

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, LOCAL ADMINISTRATION
DEPARTMENT, SECRETARIAT, TRIVANDRUM.
2. KUNNATHUKAL GRAMA PANCHAYAT,
REPRESENTED BY THE SECRETARY, KUNNATHUKAL,
KARAKONAM P.O., TRIVANDRUM.

BY ADV. SRI.L.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01/02/2007, ALONG WITH WPC NO. 24711 OF 2005, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.25461/05

APPENDIX

PETITIONERS' EXTS:

EXT.P1 – TRUE COPY OF NOTICE DT.18.7.05 INVITING APPLICANTS FOR AUCTION.

EXT.P2 – TRUE COPY OF RECEIPT DT.27.7.05 ISSUED BY R2.

EXT.P3 – TRUE COPY OF REPRESENTATION DT.13.8.05 OF 1ST PETR.

EXT.P4 – TRUE COPY OF REPRESENTATION DT.13.8.05 OF 2ND PETR.

EXT.P5 – TRUE COPY OF DO. OF 3RD PETITIONER.

EXT.P6 – TRUE COPY OF NOTIFICATION IN THE DESHABHIMANI DAILY DT.21.8.05

RESPONDENTS EXTS:

EXT.R2(a) – COPY OF AUCTION NOTIFICATION DT.3.6.05.

EXT.R2(b) – COPY OF NOTICES DT.17.6.05.

EXT.R2(c) – TRUE COPY OF RESOLUTION DT.12.8.05.

EXT.R2(d) – TRUE COPY OF NOTICES DT.16.8.05

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) Nos.25461 OF 2005
& 24711 of 2005
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DATED THIS THE 1ST FEBRUARY, 2007

J U D G M E N T

The petitioners in W.P.(C)25461 of 2005 who were the successful bidders in the auction conducted on 27.7.2005 by the 2nd respondent-Kunnathukal Grama Panchayat in respect of shop rooms in Suphala Shopping Complex belonging to the Panchayat for the period March, 2005-06 have filed the Writ Petition seeking to quash Ext.P6 re-auction notice issued by the 2nd respondent. The petitioners submit that they being the highest bidders were directed to make earnest money deposits by the Panchayat. Ext.P1 is the auction notification dated 27.7.2005 and Ext.P2 series are copies of receipts issued by the 2nd respondent acknowledging deposit of earnest money by the petitioners. The petitioners complain that though they have complied with all formalities which are required from their side and the auction was confirmed in their name, the 2nd respondent-Panchayat is yet to execute an agreement or permit the petitioners to start their operations. They in fact submitted representations before the 2nd respondent and requested the 2nd respondent for execution of the agreement and for permission to start business. Exts.P3, P4 and P5

are copies of the representations. On receiving the representations, the 2nd respondent has issued a fresh notification (Ext.P6) informing that fresh auction in respect of the shop rooms already bid by the petitioners will be conducted on 30.8.2005. The petitioners challenge Ext.P6 on various grounds and have filed the Writ Petition not only for quashing Ext.P6 but also for a direction compelling the 2nd respondent-Panchayat to permit the petitioners to conduct business in the shop rooms.

2. The petitioner in W.P.(C)24711 of 2005 had also participated in the public auction conducted by the Panchayat. He was allotted room No.3; room Nos.1, 2, 4 and 5 were allotted to one Velappan Nair who later informed the Panchayat that he does not intend to take the rooms on rent. The Panchayat therefore re-notified public auction of room Nos.1, 2, 4 and 5 and re-auction was conducted on 27.7.2005. The petitioner was the highest bidder for room No.2 and the Panchayat confirmed the auction and issued Ext.P4 receipt. But it is understood that since there are complaints regarding allotment of room No.5, the Panchayat is taking steps for cancelling the auction conducted on 27.7.2005. Therefore, requesting for finalisation of the allotment after confirming the auction, the petitioner has filed the Writ Petition

seeking a writ of mandamus directing the respondents to issue order confirming the auction; for a declaration that the petitioner is entitled to be allotted room No.2; and for a direction to the respondents to hand over room No.2 in Suphala shopping complex to the petitioner forthwith.

3. In W.P.(C)No.25461 of 2005, on behalf of the Panchayat the Secretary has filed a detailed counter affidavit. It is contended therein that the Suphala Shopping Complex and Lodge is a commercial building constructed by the Panchayat which consists of 7 shop rooms, lodge, common bathrooms and toilets. Pursuant to the decision of the Committee to rent out the building by auction, Ext.R2(a) auction notification dated 3.6.2005 was issued. Ext.R2(a), it is contended, contains a condition that auction is to be approved by the Panchayat Committee. In the auction conducted on 15.6.2005, one Velappan Nair was the highest bidder in respect of shop room Nos.1, 2, 4 and 5 for a monthly rent of Rs.7600/-, Rs.6550/-, Rs.5550/- and Rs.5150/- respectively. The petitioner in W.P.(C)24711 of 2005 was the highest bidder in respect of room No.3 for a monthly rent of Rs.4300/-. One Appu was the highest bidder in respect of shop room No.7 for a monthly rent of Rs.3150/-. One Sundaresan was the highest bidder in

respect of lodge rooms. The Panchayat Committee approved the same and notices were issued to those persons for remitting rent for 12 months less the earnest money deposit (EMD). Ext.R2(b) series, seven in number, are copies of the notices. But Velappan Nair and Sundaresan did not remit the amounts. Therefore, the Committee decided on 16.7.2005 to re-auction the rooms in respect of which the above two persons have not remitted the amount. It is accordingly that auction notice was issued as per Ext.P1 notification. In the re-auction conducted pursuant to Ext.P1, the bidders collectively and intentionally did not raise the amount. The highest bid amounts in respect of room Nos.1, 2, 4 and 5 were only Rs.2050/-, Rs.2500/-, Rs.2100/- and Rs.1500/- respectively as against the earlier highest amounts of Rs.7600/-, Rs.6550/-, Rs.5550/- and Rs.5150/-. Thus the bid amounts in the re-auction conducted on 27.7.2005 were lesser than one-half of the bid amounts in the first auction. Therefore, the Panchayat Committee resolved under Ext.R2(c) resolution to cancel the re-auction and to invite quotations. Based on the same, notices were given to the petitioners intimating cancellation and requiring to receive back the EMD. Ext.R2(d) series are copies of the notices. Though quotation was also invited as per Ext.P6 notification, no further

action has been taken in view of the stay order passed by this Court.

4. In W.P.(C)No.24711 of 2005 also a counter affidavit has been filed, raising the self-same contentions and producing documents Ext.R1(a) copy of the auction notification dated 3.6.2005, Ext.R1(b) copy of the resolution dated 12.8.2005 and Ext.R1(c) copy of the notice dated 16.8.2005.

5. Reiterating their contentions in the Writ Petitions, the petitioners in both the cases have filed reply affidavits.

6. Sri.S.M.Prem and Sri.C.S.Ramanathan, Advocates addressed me on behalf of the petitioners in the cases while Sri.L.Mohanan, Advocate addressed me on behalf of the Panchayat. Learned counsel addressed me on the basis of the pleadings raised by their respective parties.

7. Having considered the submissions addressed before me, I am of the view that the Panchayat is justified in going ahead with the third auction which is now proposed. Both the Writ Petitions will accordingly stand disposed of, however, in the following terms:-

The Panchayat is permitted to go ahead with the third auction which is presently proposed. It is open to the petitioners also to participate in the third auction. If the

third auction does not turn out to be fruitful from the point of view of the Panchayat, i.e., if no person comes forward to quote amounts more than what was quoted by the petitioners in the second auction, then the Panchayat will not go for a fourth auction. Instead, the Panchayat will have a private auction between those parties who participated in the second auction alone and finalise the same.

The parties will bear their respective costs.

(PIUS C. KURIAKOSE, JUDGE)

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WP(C)25461/05 & CONNECTED CASE

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